

58 FR 36958-02, 1993 WL 248451(F.R.)  
NOTICES  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
(FRL-4677-2)

Public Notice for New Jersey's Request to Assume the Section 404 Program Under the Clean  
Water Act

Friday, July 9, 1993

\*36958 AGENCY: United States Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Federal Clean Water Act (CWA) established the Section 404 Permit Program, under which the U.S. Army Corps of Engineers (Corps), may issue permits for the discharge of dredged or fill material into "waters of \*36959 the United States" as identified in the CWA. Section 404(g)(1) of the CWA allows any State to apply to the United States Environmental Protection Agency (USEPA) to administer its own individual and general permit program for the discharge of dredged or fill material into state regulated waters within its jurisdiction. The State of New Jersey has submitted a full and complete Request for State Program Approval and proposes to operate the State permit program for regulated activities into waters within the jurisdiction of the State in accordance with the CWA. USEPA will approve or disapprove the program transfer by October 13, 1993.

DATES: Public comment period for the proposed transfer closes on August 27, 1993. USEPA will hold three public hearings on New Jersey's application, on August 10, 1993 (Moorestown, NJ), August 11, 1993 (Hightstown, NJ), and August 12, 1993 (Chatham, NJ).

ADDRESSES: Any interested persons may comment upon New Jersey's application by writing to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, USEPA Region 2, 26 Federal Plaza, New York, NY 10278. The hearings will be held at the following locations:

(1) Tuesday August 10, 1993 from 3 p.m. to 5 p.m. and 7 p.m. to close, at the auditorium of Moorestown High School, 803 N. Stanwick Road, Moorestown, New Jersey.

(2) Wednesday August 11, 1993 from 3 p.m. to 5 p.m. and 7 p.m. to close at the auditorium of the Grace Rogers School, Stockton Street, Hightstown, Mercer County, NJ.

(3) Thursday August 12, 1993 from 3 p.m. to 5 p.m. and 7 p.m. to close, at the auditorium of the Chatham Middle School, 480 Main Street ("old" Route 24) Chatham, Morris County, NJ.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch at 212-264-5170.

SUPPLEMENTARY INFORMATION: The State's submission is on file and may be inspected and copied (for a per page charge) at the USEPA Region 2 office in New York City. In addition, copies of the complete submission package are available for review at the New Jersey Department of Environmental Protection and Energy (NJDEPE), CN 401, 501 East State Street, Trenton, New Jersey, 08625-0401, (609-633-6755). The regulations establishing the requirements for the approval of State programs under Section 404 of the CWA were published in Volume 53, No. 108 of the Federal Register, June 6, 1988 (40 CFR Parts 232 and 233), beginning at page 20764.

## Background

The Federal Clean Water Act ([HYPERLINK "http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=33USCAS1251&originatingDoc=I7ABDB1C0313911DABAA48F9C8B1C0930&refType=LQ&originationContext=document&vr=3.0&rs=cb1t1.0&transitionType=DocumentItem&contextData=(sc.Search)"] et seq.) established the Section 404 Permit Program, under which the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (Corps), may issue permits for the discharge of dredged or fill material into "waters of the United States" as identified in the CWA.

Section 404(g)(1) of the CWA provides that the Governor of any State can apply to the Administrator of the EPA to administer its own individual and general permit program for the discharge of dredged or fill material into state regulated waters within its jurisdiction. "State regulated waters" are defined in [HYPERLINK "http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=40CFRS232.2&originatingDoc=I7ABDB1C0313911DABAA48F9C8B1C0930&refType=SP&originationContext=document&vr=3.0&rs=cb1t1.0&transitionType=DocumentItem&contextData=(sc.Search)#co\_pp\_2c830000eaf5"] as "those waters of the United States in which the Corps suspends the issuance of Section 404 permits upon approval of a State's Section 404 permit program by the Administrator under Section 404(h). The program cannot be transferred for those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the high tide line, including wetlands adjacent thereto."

The State application to administer the Section 404 program must include the following:

(a) A letter from the Governor of the State requesting program approval.

(b) A complete program description as set forth in [HYPERLINK "http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=40CFRS233.11&originatingDoc=I7ABDB1C0313911DABAA48F9C8B1C0930&refType=LQ&originationContext=document&vr=3.0&rs=cb1t1.0&transitionType=DocumentItem&contextData=(sc.Search)"] ].

(c) An Attorney General's statement, as set forth in [HYPERLINK "http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=40CFRS233.12&originatingDoc=I7ABDB1C0313911DABAA48F9C8B1C0930&refType=LQ&originationContext=document&vr=3.0&rs=cb1t1.0&transitionType=DocumentItem&contextData=(sc.Search)"] ].

(d) A Memorandum of Agreement with the EPA Regional Administrator, as set forth in [HYPERLINK "http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=40CFRS233.13&originatingDoc=I7ABDB1C0313911DABAA48F9C8B1C0930&refType=LQ&originationContext=document&vr=3.0&rs=cb1t1.0&transitionType=DocumentItem&contextData=(sc.Search)"] ].

(e) A Memorandum of Agreement with the Secretary of the Army, as set forth in [HYPERLINK "http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=40CFRS233.14&originatingDoc=I7ABDB1C0313911DABAA48F9C8B1C0930&refType=LQ&originationContext=document&vr=3.0&rs=cb1t1.0&transitionType=DocumentItem&contextData=(sc.Search)"] ].

The State of New Jersey has submitted a full and complete Request for State Program Approval and proposes that the New Jersey Department of Environmental Protection and Energy operate the State permit program for regulated activities into waters within the jurisdiction of the State in accordance with Section 404 of the CWA.

New Jersey's Freshwater Wetlands Protection Act (Act), [HYPERLINK "http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST13%3a9B-1&originatingDoc=I7ABDB1C0313911DABAA48F9C8B1C0930&refType=LQ&originationContext=document&vr=3.0&rs=cb1t1.0&transitionType=DocumentItem&contextData=(sc.Search)"] ] et seq (Pub. L. 1987, c. 156) requires the State to "take all appropriate action to secure the assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers pursuant to the Federal Act," providing the impetus to allow the pursuit of this goal. Since the State program was established with the

idea that the State would pursue assumption of the 404 program, many aspects of the State's program parallel the Federal 404 program. However, the State program is more comprehensive in that it regulates more activities than just the disposal of dredged or fill material in regulated areas, and includes the regulation of transition areas (non-wetland buffers) adjacent to most wetlands. These buffer areas and the State regulated activities that go beyond the purview of the Federal program are not subject to EPA approval or oversight.

The State program provides for the issuance of two types of permits: Statewide general permits and Individual permits. Applicants must submit applications with accompanying documentation and plans to the State for review and approval prior to undertaking any regulated activities pursuant to either Statewide general permits or Individual permits. The State has adopted 23 Statewide general permits. In order to issue a general permit, the State must determine that the proposed activities "will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, will cause only minor impacts on freshwater wetlands, will be in conformance with the purposes of the Act, and will not violate any provision of the Federal Act" (N.J.S.A. 13:9B-23C). An applicant must meet specific conditions in order for the State to authorize regulated activities pursuant to a specific Statewide general permit. If a proposed activity does not meet the standards for authorization under a general permit, the applicant may apply for authorization under an individual permit.

Individual permits are issued by the State upon the finding that there are no practicable alternatives to the proposed activity. A complete description of the Individual permit process and the standards for granting of an Individual permit are found at N.J.S.A. 7:7A-3.

In addition, there are standard requirements for all regulated activities in freshwater wetlands and State open waters (N.J.S.A. 7:7A-3.5.) For example, an Individual permit cannot "cause or contribute to a violation of any applicable State water quality standard." Included within the standard requirements are criteria for the determination of whether a proposed activity is in the "public interest."

**\*36960** The Regional Administrator is required to approve such submitted application by the State to assume the Section 404 program unless the State program does not meet the requirements of Section 404 (h) of the CWA. Among other authorities, the State must have: (1) Adequate authority to issue permits which comply with all pertinent requirements of the CWA, including the guidelines developed under Section 404 (b)(1); (2) Adequate authority, including civil and criminal penalties, to abate violations of the permit or permit program; and (3) authority to ensure that the Administrator, the public, and any other affected State and other affected agencies, are given notice of each application for permit and are provided an opportunity for comment before a ruling on each such application.

The following is a brief description of EPA's procedure for Program approval:

(a) Once EPA determines that NJDEPE's assumption package is complete, a 120 day statutory review period commences.

(b) EPA will provide copies of a complete assumption package within 10 days of receipt to the Corps, the National Marine Fisheries Service (NMFS), and the United States Fish and Wildlife Service (USFWS) for review and comment.

Within 90 days of EPA's receipt of a complete program submission, the Corps, FWS and NMFS shall submit to EPA any comments on the State program.

(c) EPA will publish notice of the State's application in the Federal Register and in enough of the State's largest newspapers to attract statewide attention.

(d) EPA will provide for public hearings not less than 30 days after such notice is published in the Federal Register.

(e) EPA will approve or disapprove the program transfer within 120 days of receipt of the complete program submission.

(f) If the Regional Administrator approves the State's program, he shall notify the State and the Secretary and publish notice in the Federal Register. Transfer of the program to the State shall not be effective until this notice is published.

(g) If the Regional Administrator disapproves the State's program based on the State not meeting the requirements of the Act or of the transfer regulations, the Regional Administrator shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State's program which are necessary to obtain approval. If the State resubmits a program submission remedying the identified problem areas, the approval procedure and statutory review period shall begin upon receipt of the revised submission.

EPA Region 2 has scheduled three public hearings to consider this request by the State of New Jersey and to enable all interested parties to present their views on the State's submission. At the public hearings, oral statements will be heard and considered, and a stenographer will be present to record the proceedings. Testimony should be submitted in writing. Oral presentations will generally be limited to five (5) minutes and should generally summarize the written testimony to allow time for all interested parties to be heard. Persons are encouraged to bring extra copies of their written statements for the use of the hearing panel and other interested persons.

The hearing record will be left open for a period of 15 days following the last hearing to allow any person to submit additional written statements or to present views or evidence tending to rebut testimony presented during the hearing. All comments or objections presented at the public hearings and during the entire public comment period will be considered by USEPA before taking final action on the New Jersey request for State Program Approval. Please bring this notice to the attention of persons you know would be interested.

Dated: June 30, 1993.

William J. Muszynski,

Acting Regional Administrator.

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